Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
@Communications, Inc.	)	
	)	
v.	)	CC Docket No. 02-4
	)	
Carolina Telephone and Telegraph	)	
Company and Central Telephone Company	)	
(collectively, "Sprint")	)	
	)	
Petition for a Declaratory Ruling	)	

COMMENTS OF CABLEVISION LIGHTPATH, INC.

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Cablevision Lightpath, Inc. ("Lightpath") hereby files its comments in response to the Federal Communications Commission's ("Commission's") Public Notice requesting comment on the Petition for Declaratory Ruling filed by @Communications, Inc. ("@Communications") in the above-captioned proceeding.[1/] To achieve the Commission's ultimate goal under the 1996 Act of establishing facilities-based competition in the local exchange market, the pro-competitive incentives and protections created by the Commission's existing rules must be fully and vigorously enforced. Accordingly, Lightpath strongly supports @Communications, Inc.'s Petition for a Declaratory Ruling[2/] reaffirming a competitive local exchange carrier's right to exercise its entitlement to choose a single interconnection point without facing crippling and

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1/ *@Communications, Inc. v. Carolina Telephone and Telegraph Company and Central Telephone Company (collectively, "Sprint"), Petition for a Declaratory Ruling*, CC Docket No. 02-4, DA 02-164, *Public Notice* (Jan. 18, 2002)

2/ *@Communications, Inc. v. Telephone Company and Central Telephone Company (collectively, "Sprint")*, CC Docket No. 02-4, *Petition for a Declaratory Ruling* (Jan. 9, 2002) ("Petition").

anti-competitive incumbent-imposed financial penalties.

I. INTRODUCTION AND SUMMARY

The Commission's rule entitling competitive carriers to choose both the number and location of interconnection points is clear and well-established. It is equally obvious under the Commission's reciprocal compensation rules that each carrier is responsible for traffic on its side of the interconnection point and that no carrier may charge an interconnecting carrier for traffic originated on its own network. Sprint's attempt to force @Communications to choose between its right to a single interconnection point and its right under the reciprocal compensation rules to fair compensation arrangements violates both the plain language of the rules (and the Commission's prior interpretation of those rules) and the rules' intent to restrict incumbent abuse of market power and encourage facilities-based investment.

The practical consequences of the erosion of the Commission's pro-competitive protections sought by Sprint would be devastating to local competition. Under Sprint's plan (a variation on incumbents' oft-proposed and rejected "geographically relevant interconnection points" ("GRIPS") and "virtual geographically relevant interconnection points" ("V-GRIPS") plans), competitive carriers would be faced with a Hobson's choice of either establishing technically unnecessary and inefficient interconnection points at hundreds or even thousands of incumbent end offices or paying heavy fees to incumbents for the transport of incumbent-originated traffic over the incumbents' side of the network. Forcing CLECs to either mirror obsolete ILEC network architecture or to pay for the privilege of innovation would not only degrade the quality and variety of services to consumers, but would further entrench incumbent market power by diverting scarce CLEC resources to incumbents. Accordingly, the Commission's existing rules, which prohibit such anti-competitive incumbent conduct, should be fully enforced and Sprint's plan unequivocally and comprehensively rejected.

II. COMPETITIVE CARRIERS' RIGHTS TO INTERCONNECTION ON REASONABLE TERMS AND PURSUANT TO FAIR COMPENSATION ARRANGEMENTS ARE WELL-ESTABLISHED AND SHOULD BE ENFORCED.

As the Commission has previously recognized, strong rules restricting the incumbents' ability to exercise their market position are essential to the development of effective competition in the local exchange market.[3/] Recognizing this need, the Commission established clear and robust interconnection and compensation rules protecting competitors seeking interconnection from anticompetitive incumbent behavior.[4/] Those rights, as recently noted by Chairman Powell, must be fully enforced if the Commission's goal of establishing facilities-based competition is to be achieved.[5/]

A. Competitive Carriers Are Entitled to Interconnect at Any "Technically Feasible Point" of Their Choosing on the Incumbents' Network, and Thus to Control the Choice Both of the Location and Number of Interconnection Points.

Section 251(c)(2) of the Act, and the Commission's implementing rules, impose upon incumbent carriers the "duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network . . . at any

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3/ *See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket Nos. 96-98, 95-185, *First Report and Order*, 11 FCC Rcd. 15499, ¶¶ 216, 218 (1996) ("*Local Competition First Report and Order*") (intervening history omitted), *aff'd AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999); *see also id.* ¶ 1087.

4/ *See Local Competition First Report and Order*, 11 FCC Rcd.15499, ¶¶ 216, 218; *see also id.* ¶ 1087.

5/ *See* "Digital Broadband Migration: Part II," Speech of Michael K. Powell, Chairman of the Federal Communications Commission (Oct. 23, 2001), *available at* http://www.fcc.gov/speeches/Powell/2001/spmkp109.html (asserting that rules relating to interconnection should provide incentives for investment in facilities and should be "rigorously enforced").

technically feasible point within the carrier's network."[6/] The incumbent "is relieved of its obligation to provide interconnection at [the point selected by the competitive carrier] in its network *only* if it proves . . . that interconnection at that point is technically infeasible."[7/] Moreover, the Commission has explicitly and repeatedly determined that this right to interconnect at any technically feasible point not only means that the competitive carrier rather than the incumbent is entitled to choose the location of interconnection, but also "means that a competitive [carrier] has the option to interconnect at only one technically feasible point in each LATA," if it so chooses.[8/] Incumbents are thus expressly prohibited from requiring any competitive carrier to interconnect at multiple interconnection points.

6/ 47 U.S.C. § 251(c)(2); 47 C.F.R. § 51.305(a) ("[a]n incumbent LEC shall provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the incumbent LEC's network . . . at any technically feasible point within the incumbent LEC's network"); *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, *Notice of Proposed Rulemaking*, 16 FCC Rcd. 9610, ¶ 112 (2001) (*"Unified Intercarrier Compensation NPRM"*) ("An [incumbent carrier] must allow a requesting telecommunications carrier to interconnect at any technically feasible point").

7/ *See Application of SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas*, CC Docket No. 00-65, *Memorandum Opinion and Order*, 15 FCC Rcd. 18354, ¶ 78 n.171 (2000) (*"SBC Order"*) (citing 47 C.F.R. § 51.305(e) and *Local Competition First Report and Order*, 11 FCC Rcd. 15499, ¶¶ 198, 203, 205 (emphasis added)).

8/ *SBC Order*, 15 FCC Rcd. 18354, ¶ 78 (citing 47 U.S.C. §§ 251(c)(2), (3); *Unified Intercarrier Compensation NPRM*, 16 FCC Rcd. 9610, ¶ 112 ("An [incumbent carrier] must allow a requesting telecommunications carrier to interconnect at any technically feasible point, including the option to interconnect at a single POI per LATA."); *Application of Verizon Pennsylvania Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc., and Verizon Select Services Inc. for Authorization to Provide In-Region, InterLATA Services in Pennsylvania*, CC Docket No. 01-138, *Memorandum Opinion and Order*, 16 FCC Rcd. 17419, n.345 (2001) ("*PA 271 Order*") (noting Verizon's appeal of a Pennsylvania decision ordering the modification of a Pennsylvania order approving an interconnection agreement that allowed a single point of interconnection per tandem rather than per LATA and stating that "[i]n the future, to the extent that Verizon required competitive LECs to physically interconnect with Verizon at every tandem area . . . Verizon would not be in compliance with our rules") (citing 47 C.F.R. § 51.305(a)(2) and *Memorandum of the Federal Communications Commission as Amicus Curiae, U.S. West Communications, Inc. v. AT&T Communications of the*

B. Carriers Are Responsible for Traffic on Their Own Side of the Interconnection Point, and May Not Impose Charges on Interconnecting Carriers for the Transport of Traffic on Their Networks that Originates on Their Networks

Nor do the Commission's existing reciprocal compensation rules permit incumbents to achieve indirectly through intercarrier compensation arrangements what they cannot achieve directly under the Commission's interconnection rules -- involuntary interconnection by competitive carriers at multiple points selected by incumbents. Sprint's and other incumbents' attempts to force competitive carriers to waive their right to interconnect at a single interconnection point of their choice by imposing heavy financial penalties upon them if they fail to conform to incumbent demands are flatly inconsistent with the Commission's existing compensation requirements, which impose responsibility on interconnecting carriers for traffic on their own side of the interconnection point and strictly limit the traffic for which compensation can be required.[9/]

Pacific Northwest, Inc. et al., No. CV 97-1575 JE (D. Or. 1998)); *see also Local Competition First Report and Order*, 11 FCC Rcd. 15499, ¶ 209 ("Section 251(c)(2) lowers barriers to competitive entry for carriers that have not deployed ubiquitous networks by permitting them to select the points in an incumbent LEC's network at which they wish to deliver traffic."); *id.* at n.464 ("[R]equesting carriers have the right to select points of interconnection at which to exchange traffic with an incumbent LEC under Section 251(c)(2).").

9/ *See* 47 U.S.C. §§ 251(c)(2), (3); 47 C.F.R. §§ 51.701(c), (d), (e); 47 C.F.R. §§ 51.703(a), (b); *see Joint Application by SBC Communications, Inc. et al., for Provision of In-Region InterLATA Services in Kansas and Oklahoma*, CC Docket No. 00-217, *Memorandum Order and Opinion*, 16 FCC Rcd. 6237, ¶¶ 233-235 (2001) ("*Kansas/Oklahoma 271 Order*") (noting that the adoption of the single interconnection point rule did not "change an incumbent LEC's reciprocal compensation obligations under [the Commission's] current rules . . . [which] preclude an incumbent LEC from charging carriers for [reciprocal compensation] traffic that originates on the incumbent LEC's network . . . [and] require that an incumbent LEC compensate the other carrier for transport and termination for local traffic that originates on the network facilities of such other carrier") (specifically citing 47 C.F.R. §§ 51.701(c), (d), (e) and generally citing 47 C.F.R. §§ 51.701, *et seq.*); *TSR Wireless, LLC v. U.S. WEST Comm., Inc.*, File Nos. E-98-13, *et al., Memorandum Opinion and Order,* 15 FCC Rcd. 11166, ¶ 34 (2000) ("The *Local Competition [First Report and] Order* requires a carrier to pay the cost of facilities used to deliver traffic originated by that carrier to the network of its co-carrier, who then terminates that

The Commission's reciprocal compensation rules require carriers to establish compensation arrangements to govern the exchange of traffic between interconnecting carriers.[10/] Under such an arrangement "each of the two carriers receives compensation from the other carrier for the transport and termination on each carrier's network facilities of telecommunications traffic that originates on the network facilities of the other carrier."[11/] Transport and termination are therefore defined to include the transmission of traffic from the *interconnection point* to the called party.[12/] The language of the reciprocal compensation rules

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traffic and bills the originating carrier for termination compensation") (*"TSR Wireless"*), *aff'd by Qwest Corp. v. FCC*, 252 F.3d 462 (D.C. Cir. 2001). *See also Investigation into Appropriate Methods to Compensate Carriers for Exchange of Traffic Subject to Section 251 of the Telecommunications Act of 1996*, Docket No. 000075-TP, *Staff Recommendation* at 68 (Fla. P.S.C. Nov. 21, 2001) (*"Florida Decision"*) (concluding that an originating carrier is precluded by Commission rules from charging a terminating carrier for the cost of transport, or for the facilities used to transport the originating carrier's traffic, from its source to the point(s) of interconnection in a LATA and determining that an originating local exchange carrier is financially responsible for bringing its traffic to the POI in a LATA), approved Dec. 5, 2001; *Petition of Media One, Inc. and New England Telephone and Telegraph for Arbitration*, DTE Nos. 99-42, 99-43, 99-52, *Order* at 25 (Mass. D.T.E. Aug. 25, 1999) (*"Massachusetts Order"*) ("[N]othing in the Act or FCC rules requir[es] a CLEC[ ] to pay the transport costs that [the incumbent] will incur to haul its traffic" to the interconnection point selected by the CLEC). *Compare PA 271 Order*, 16 FCC Rcd. 17419, ¶ 100 n. 343, n. 345.

[10/] 47 C.F.R. § 51.703(a).

[11/] 47 C.F.R. § 51.701(e). Although the reciprocal compensation rules refer to "local" telecommunications traffic in referring to the traffic triggering reciprocal compensation, the FCC recently discarded that criterion for determining the traffic subject to reciprocal compensation. *See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic*, CC Docket Nos. 96-98, 99-68, *Order on Remand and Report and Order*, 16 FCC Rcd. 9151, ¶¶ 34, 46, 54 (2001) ("*ISP Intercarrier Compensation Order*"). The FCC determined that reciprocal compensation is due for the transport and termination of all traffic on another carrier's network unless that traffic or falls within the scope of 47 U.S.C. § 251(g), which includes exchange access, information access, and exchange services for such access to interexchange carriers and information access providers. *See ISP Intercarrier Compensation Order*, 16 FCC Rcd. 9151, ¶¶ 31-32. Accordingly, the reciprocal compensation rules no longer apply to only local traffic.

[12/] 47 C.F.R. § 51.701(c) (transport is defined to mean "the transmission and any necessary tandem switching of [reciprocal compensation traffic] from the interconnection point between the two carriers to the terminating carrier's end office switch that directly serves the called party,

therefore determine carriers' financial obligations in reference to the interconnection point. Accordingly, the Commission has interpreted its rules to mean that carriers are responsible for traffic on their side of the interconnection point.[13/]

Moreover, the rules expressly ban local exchange carriers from imposing charges on other carriers for their own originating traffic -- including transport fees. Section 51.703(b) could not be any clearer in its prohibition of such conduct. The rule states that local exchange carriers "*may not assess charges* on any other telecommunications carrier for telecommunications traffic that originates on the LEC's network."[14/] The rules provide no exception to this broad prohibition against the imposition of charges for ILEC-originated traffic for "transport" charges related to a CLEC's assertion of its right to select a single point of interconnection.

Thus, under the current rules, providers are clearly responsible for traffic on their side of the interconnection point and are barred from shifting costs arising from calls generated on their networks to the interconnecting carrier.[15/] Accordingly, incumbents cannot -- as Sprint is

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or equivalent facility provided by a carrier other than an incumbent LEC"); 47 C.F.R. § 51.701(d) (termination is defined to mean "the switching of telecommunications traffic at the terminating carrier's end office switch, or equivalent facility, and delivery of such traffic to the called party's premises"). Thus, originating carriers are required to compensate terminating carriers for the transport and termination of traffic from the interconnection point to the customer.

13/ *See TSR Wireless*, 15 FCC Rcd. 11166, ¶ 34 ("The *Local Competition First Report and Order* requires a carrier to pay the cost of facilities used to deliver traffic originated by that carrier to the network of its co-carrier, who then terminates that traffic and bills the originating carrier for termination compensation"). *Compare PA 271 Order*, ¶ 100 n.343, n. 345 (2001).

14/ 47 C.F.R. § 51.703(b) (emphasis added).

15/ *See TSR Wireless*, 15 FCC Rcd. 11166, ¶ 34; *Kansas/Oklahoma 271 Order*, 16 FCC Rcd. 6237, ¶¶ 233-35 (cautioning an incumbent against its reliance in a 271 proceeding on the argument that the single point of interconnection rule supports the imposition of transport charges for incumbent-originated traffic, the Commission noted that the adoption of that rule did not "change an incumbent LEC's reciprocal compensation obligations under [the Commission's]

seeking to do -- charge competitive carriers any fee (including "transport" charges) for the incumbent's originating traffic, regardless of the location of the interconnection point chosen by competitive carriers pursuant to the single point of interconnection rule.

C. The Commission's Interconnection and Reciprocal Compensation Rules Are Intended to Work Together to Restrain Incumbent Market Power

Incumbents increasingly assert the surprising proposition that even if the single interconnection point rule and the reciprocal compensation rules are clear in and of themselves, the Commission did not intend them to be read together. There is simply no reason to believe, however, that in developing a comprehensive regulatory framework for interconnection that the Commission failed to consider that its rules governing physical interconnection (*i.e.* the single interconnection point rule) and its rules governing carriers' financial rights and responsibilities (*i.e.* the responsibility of carriers for traffic on their side of the interconnection point and the prohibition against carriers charging other carriers for the transport of traffic on their networks that originated on their networks) for the exchange of traffic between those networks would *together* determine carrier obligations and rights. Indeed, incumbents' specific contention that the Commission could not have intended incumbents to bear increased transport costs as a result of the single interconnection point rule is demonstrably untrue. The Commission has, in fact, repeatedly asserted that the single interconnection point rule is intended to foster competition by

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current rules . . . [which] *preclude an incumbent LEC from charging carriers for . . . traffic that originates on the incumbent LEC's network* . . . [and] require that an incumbent LEC compensate the other carrier for the transport and termination of traffic that originates on the network facilities of such other carrier") (emphasis added); *Florida Decision* at 68 (concluding that an originating carrier is precluded by Commission rules from charging a terminating carrier for the cost of transport, or for the facilities used to transport the originating carrier's traffic, from its source to the point(s) of interconnection in a LATA and determining that an originating local exchange carrier is financially responsible for bringing its traffic to the POI in a LATA); *Massachusetts Order* at 25 ("[N]othing in the Act or FCC rules requir[es] a CLEC[ ] to pay the

allowing new entrants to "*lower[ ] [their] costs of, among other things, transport and termination*" by selecting the "most efficient points at which to exchange traffic with incumbent LECs"[16/] and relieving competitive carriers from the obligation of "transport[ing] traffic to less convenient or efficient interconnection points" chosen by the incumbent.[17/]

III. UNDERCUTTING THE COMMISSION'S PRO-COMPETITIVE PROTECTIONS AGAINST INCUMBENT MARKET POWER ABUSE WOULD SERIOUSLY IMPEDE THE DEVELOPMENT OF ROBUST FACILITIES-BASED COMPETITION IN THE LOCAL EXCHANGE MARKET.

As indicated by the millions of dollars invested by facilities-based competitors such as Lightpath in developing their own networks, the Commission's single interconnection point and reciprocal compensation rules have successfully furthered the Commission's and the Act's goal of promoting facilities-based competition in the local exchange market. By providing competitive carriers with a right to efficient interconnection and preventing incumbents from forcing competitive carriers to engage in wasteful duplication of obsolete incumbent networks or imposing monopoly rents, those rules have encouraged competitive carriers to invest in innovative technologies (such as fiber-rings, SONET networks, and ATM fiber loops) by allowing them (and consumers) to take full advantage of the efficiencies of the superior networks resulting from such investments. Adoption of the type of backward-looking schemes proposed by Sprint and other incumbents would weaken if not eliminate the strides that the Commission has made in introducing competition to the local exchange market by robbing facilities-based competitive carriers of both the incentive and the ability to make the investments necessary to

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transport costs that [the incumbent] will incur to haul its traffic" to the interconnection point selected by the CLEC).

16/ *SBC Order*, 15 FCC Rcd. 18354, ¶ 78 (citing *Local Competition First Report and Order,* 11 FCC Rcd. 15499, ¶ 172 (emphasis added)).

17/ *SBC Order*, 15 FCC Rcd. 18354, ¶ 78 n.173 (citing *Local Competition First Report and Order*, 11 FCC Rcd. 15499, ¶ 209).

compete effectively with incumbents.

The profoundly anti-competitive nature of a scheme such as Sprint's can be concretely illustrated by examining its likely effect on Lightpath were it to be adopted by the incumbent (Verizon) in Northern New Jersey, where Lightpath has installed an extensive fiber-based telecommunications network. Using a single, multifunction switch, Lightpath's Northern New Jersey network serves the entire 224 LATA, a geographic area equivalent to three Verizon tandems and more than 100 Verizon end offices. In order to avoid transport fees for incumbent-originated traffic under the proposed scheme, Lightpath would be required to establish new interconnection points in each local calling area where Lightpath wins a new customer.

Under such a proposal, even if Lightpath had only one new customer in each incumbent-defined local calling area, it would be required to establish up to 139 new interconnection points to ensure that its customers could receive calls from Verizon customers. With collocation costs approximating $40,000 per cage, and end office trunking costs that exceed $600 per month at a minimum, complying with the ILECs' "modest proposal" would cost Lightpath more than $5,000,000 to establish and more than $1,000,000 a year to sustain. Predicated on the notion that the ILEC network topology is *the* network topology, adoption of such a scheme would force new carriers to replicate ILEC networks, to match the scale and scope of the incumbent, and – as a result – abruptly end investment in local telecommunications competition. Moreover, if Lightpath chose not to build those facilities, it would be required to instead pay Verizon staggering fees for the "transport" of incumbent-originated traffic over incumbent networks from up to 139 incumbent end offices to the interconnection point selected by Lightpath.

Such proposals are commercially unsound and would never serve as a basis for exchanging traffic in a marketplace not distorted by the ILEC monopolies. Significantly, the

structure of agreements reached by interconnecting *incumbents* demonstrates that the environment fostered by the single interconnection point rule far more closely resembles what would occur in a competitive market than would that created by the ILECs' proposals. This is supported by the fact that agreements between interconnecting incumbents -- who have roughly equal bargaining power -- typically require few interconnection points, which generally occur high up in the network.[18/] Current incumbent proposals such as Sprint's, in contrast, like past incumbent demands, are designed to require competitors that lack bargaining power to subsidize the incumbents' networks. Such a competitive step backwards toward monopoly should not be permitted.

[18/] *See Unified Intercarrier Compensation NPRM*, CC Docket 01-92, Initial Comments of Global Crossing, Ltd. at 11-12 (Aug. 21, 2001).

IV. CONCLUSION

For the foregoing reasons, Sprint's attempts to undermine the clear requirements of the Commission's single point of interconnection and reciprocal compensation rules should be rejected, and competitive carriers' rights to select a single point of interconnection without incumbent imposed financial penalties should be vigorously enforced.

Respectfully submitted,

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Dated: February 19, 2002

CERTIFICATE OF SERVICE

I, Alexandria Jungkeit, hereby certify that on this 19th day of February 2002, a copy of the foregoing was filed on the Federal Communications Commission's Electronic Comment Filing System and the following parties were served in accordance with the Commission's rules:

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